

223914



May 3, 2010

VIA FIRST CLASS MAIL

The Honorable Jocelyn G. Boyd
Interim Chief Clerk/Administrator
Public Service Commission of South Carolina
Post Office Box 11649
Columbia, South Carolina 29211

RE: United Utility Companies, Inc.

Dear Ms. Boyd:

Pursuant to 26 S.C. Code Ann. Reg. 103-514 (Supp. 2009), United Utility Companies, Inc. ("UUC" or the "Company") hereby files with the Public Service Commission of South Carolina ("Commission") South Carolina Department of Health and Environmental Control ("DHEC") Consent Order, No. 10-021-W, executed April 27, 2010, a copy of which is enclosed herein.

As you are aware, Commission Regulation 103-514.C provides that wastewater utilities are required to file notice of a violation of a DHEC regulation which results in the issuance of a DHEC order within twenty-four hours of the utility's receipt of said order. 26 S.C. Code Ann. Reg. 103-514.C. Based upon the language set forth therein, UUC interprets this regulation to require wastewater utilities to file administrative orders which are unilaterally issued by DHEC without the consent of the utility. Correspondingly, the Company does not interpret this regulation to require the filing of consent orders whereby the utility and DHEC reach a mutually agreeable determination regarding an alleged violation. Rather, in these instances, the utility has agreed with, and does not contest, the findings, terms and conditions of DHEC with respect to a violation and no further enforcement action is taken by DHEC.

Notwithstanding its interpretation of the Commission's regulation, UUC is aware that ORS may not share the Company's interpretation of R. 103-514.C. Rather, it appears that ORS takes the position that all DHEC orders, whether consent orders, administrative orders or emergency orders, are required to be filed with the Commission and ORS. See Docket No. 2009-479-W/S, Tr. Vol. 6, p. 1020, l. 2 – p. 1021, l. 3. Although the Company is unaware of any Commission orders ruling on or interpreting the provisions of 103-514.C which would support ORS's stated position, UUC is, nevertheless, submitting the enclosed consent order to the Commission and ORS at this time out of an abundance of caution. UUC would further state that the steps taken to address the violation are those set out in the attached consent order.

By copy of this letter, I am providing a copy of this document to ORS. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies enclosed and returning the same to me via the enclosed self-addressed envelope.

If you have any questions or if you need any additional information, please do not hesitate to contact me.

Sincerely,

Bruce T. Haas
Regional Director

Enclosure

cc: South Carolina Office of Regulatory Staff

a Utilities, Inc. company United Utility Companies, Inc.

P.O. Box 4509 • West Columbia, SC 29171-4509 • P: 803-796-9545 • F: 803-791-8643
110 Queen Pkwy. • West Columbia, SC 29169 • www.uwater.com

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Promoting and protecting the health of the public and the environment

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MAY 03 2010

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April 29, 2010

CERTIFIED MAIL 91 7108 2133 3937 3721 4578
RETURN RECEIPT REQUESTED

Bruce T. Haas
Po Box 4509
West Columbia, South Carolina, 29171-4509

RE: **Consent Order # 10-021-W**
United Utility Companies, Inc.
Highland Forest SD WWTP
NPDES Permit: SC0034444
Greenwood County

Dear Mr. Haas:

Enclosed, please find fully executed Consent Order # **10-021-W** for the above referenced facility. The Order is considered executed on April 27, 2010.

Please note the Requirements outlined on pages four, five and six of the Order. Include the Consent Order number listed above on all documents submitted to the Department in settlement of this Order, including all checks remitted as payment of the civil penalty.

If you have any questions, please contact me at (803) 898-4327 or by e-mail at osborned@dhec.sc.gov.

Sincerely,

Charles (Dennis) Osborne
Water Enforcement Division
Bureau of Water

cc: Jamie Teraoka, BOW – WP Enforcement/Compliance Section
Region 1, EQC Office

**THE STATE OF SOUTH CAROLINA
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

**IN RE: UNITED UTILITY COMPANIES, INC.
HIGHLAND FOREST SUBDIVISION
GREENWOOD COUNTY**

**CONSENT ORDER
10-021-W**

United Utility Companies, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of the wastewater treatment facility (WWTF) serving the residents of Highland Forest Subdivision, located about one thousand five hundred (1,500) feet south of the junction of Highways SC-67 and SC-25/178 in Greenwood County, South Carolina.

The Respondent failed to comply with the effluent limits for total copper as contained in its National Pollutant Discharge Elimination System (NPDES) Permit.

The South Carolina Department of Health and Environmental Control (Department) and the Respondent concur that in the interest of resolving this matter without delay and expense of litigation, the Respondent agrees to the entry of this Order, but neither agrees with nor admits the Findings of Fact or the Conclusions of Law; and therefore, agrees that this Order shall be deemed an admission of fact and law only as necessary for enforcement of this Order by the Department.

FINDINGS OF FACT

1. The Respondent owns and is responsible for the proper operation and maintenance of the WWTF serving the residents of Highland Forest Subdivision in Greenwood County, South Carolina.

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2. The Department issued NPDES Permit SC0034444 to the Respondent authorizing the discharge of treated wastewater to receiving waters named Henley Creek to Ropers Creek to Ninety Six Creek in accordance with the effluent limitations, monitoring requirements, and other conditions set forth therein.
 3. On May 28, 2008, the Respondent reported a violation of the effluent discharge limit for total copper, on its discharge monitoring report (DMR) for the February 2008 through April 2008 monitoring period. Mr. Bruce Haas, Regional Director and agent for the Respondent, stated in a comment on the DMR that the violation was due to chemical feed being out of adjustment.
 4. On June 30, 2008, Department staff sent a Notice of Violation (NOV) to the Respondent, via certified mail, regarding the total copper violation during the February 2008 through April 2008 monitoring period. Since an explanation had been previously provided, a written response was not required. The NOV was received by an agent for the Respondent on July 7, 2008.
 5. On May 28, 2009, the Respondent reported violations of the effluent discharge limit for total copper, on its DMR for the February 2009 through April 2009 monitoring period. Mr. Haas stated in a comment on the DMR that the violation was caused by the chemical, used for treatment, being unable to meet effluent limits. He also stated that a pilot study, using another chemical has been proposed at another facility.
 6. On June 10, 2009, Department staff sent a NOV to the Respondent, via certified mail, regarding the total copper violations during the February 2009 through April 2009 monitoring period. Since an explanation had been previously provided, a written response

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- was not required. The NOV was received by an agent for the Respondent on June 15, 2009.
7. On February 10, 2010, Department staff held an enforcement conference with Mr. Haas and Mr. Mac Mitchell, Regional Manager, both acting as agents for the Respondent. Department staff discussed the option of conducting a site specific water effects ratio (WER) study to determine if the total copper effluent limitations of NPDES Permit SC0034444 are appropriate for the receiving stream. Mr. Haas indicated that he would like to pursue that option. A trial test, conducted at the Oakland Plantation WWTF, using the metals removal product (WM1), manufactured by North American Geochemical, LLC, was discussed. Mr. Mitchell stated that the results of that study indicated that WM1 had not consistently met Permit requirements for total copper and that he would like to conduct another trial test at Highland Forest WWTF using a different product. The issuance of a Consent Order possibly containing civil penalties was discussed.
 8. On March 19, 2010, the Respondent submitted to the Department the results from EET Environmental, Inc. (EET) a report regarding "Screening Test to Determine the Feasibility of Conducting a Water Effect Ratio for Adjustment of Copper Limits" for the Highland Forest SD WWTP. The conclusions of this report, including samples provided to EET, indicated that "a Water Effect Ratio is predicted to result in substantially higher average and maximum limits for copper." Based upon these results and discussions with Department staff during the February 2, 2010 conference, the Respondent has submitted samples to EET and has begun the WER study process.
 9. On March 30, 2010, the Respondent submitted to the Department a "Study Plan" prepared by ETT regarding the procedures to be used in completing this study.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department reaches the following Conclusions of Law:

1. The Respondent violated the Pollution Control Act, S.C. Code Ann. § 48-1-110 (d) (2008) and Water Pollution Control Permits, S.C. Code Ann. Reg. 61-9.122.41 (a) and (d) (Supp. 2009), in that it failed to comply with the effluent limits for total copper contained in its NPDES Permit.
2. The Pollution Control Act, S.C. Code Ann. § 48-1-330 (2008), provides for a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day of violation for any person violating the Act or any rule, regulation, permit, permit condition, final determination, or Order of the Department.

NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED, pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-50 (2008) and § 48-1-100 (2008), that the Respondent shall:

1. Within ninety (90) days of the Department's approval of the WER Study Plan, submitted on March 30, 2010, provide three (3) copies of the results of the completed WER Study, to determine if current limits are appropriate for the receiving stream.
2. If the Department determines from the results of the WER that current NPDES Permit limits are not appropriate, then within thirty (30) days of that determination, submit an application to the Department for modification of the effluent limits to reflect the limits indicated by the WER study.

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3. If the Department determines from the results of the WER that current NPDES Permit limits are appropriate, or if modified Permit limits still cannot be met, then within ninety (90) days of that determination by the Department, submit to the Department three (3) copies of a preliminary engineering report (PER) detailing the upgrades necessary to ensure compliance with the effluent limitations of NPDES Permit SC0034444. The PER shall be administratively and technically complete and prepared in accordance with Standards for Wastewater Facility Construction, S.C. Code Regs. 61-67 (2008).
 4. Provide a written response to Department comments, within 30 days of the date of receipt. This requirement is applicable to the initial round of comments, as well as subsequent rounds of comments from the Department until the PER and the construction permit application is approved.
 5. Within thirty (30) days of Department approval of the PER, submit to the Department three (3) copies of plans, specifications and an application for a Permit to Construct all necessary upgrades to ensure compliance with the effluent limitations of NPDES Permit SC0034444. The plans and specifications must be administratively and technically complete and prepared in accordance with Standards for Wastewater Facility Construction, S.C. Code Regs. 61-67 (Supp. 2008).
 6. Within sixty (60) days of the date of issuance of a Permit to Construct, begin construction of all necessary upgrades to ensure compliance with the effluent limitations of NPDES Permit SC0034444.

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7. Within one hundred eighty (180) days of beginning construction, complete construction and request final Approval to Operate from the Department's Region 1-Greenwood Environmental Quality Control Office.
 8. Within two hundred and ten (210) days of beginning construction, comply with the effluent limitations of the Permit.
 9. Within thirty (30) days of the execution date of the Order, pay the Department a civil penalty in the amount of three thousand four hundred dollars (\$3,400.00).

THE PARTIES FURTHER STIPULATE that the Respondent shall pay additional civil penalties in the amount of five thousand dollars (\$5,000.00) if the Respondent fails to meet a schedule date plus five thousand dollars (\$5,000.00) per month for each and every additional month the Respondent fails to meet that schedule date, unless the schedule date has been extended by mutual agreement through further amendment to this Consent Order. The sum of five thousand dollars (\$5,000.00) shall be due and payable within thirty (30) days after the Respondent receives written notification of the Department's determination that the Respondent has failed to comply with the conditions of this Order. All penalties, including those due and payable in the event of the Respondent's failure to comply with this Order, shall be in addition to any other remedies or sanctions which may be available to the Department by reason of the Respondent's failure to comply with the requirements of this Order. The Department's determination that the Respondent has not complied with the requirements of this Order shall be final.

PURSUANT TO THIS ORDER, communications regarding this Order and its requirements, including civil penalty payments, shall be addressed as follows:

Charles (Dennis) Osborne

Water Pollution Enforcement
South Carolina DHEC
2600 Bull Street
Columbia, S.C. 29201

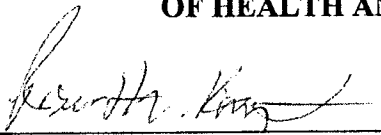
The order number should be included on all checks remitted as payment of the civil penalty.

IT IS FURTHER ORDERED AND AGREED that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-330 (2008), to include the assessment of additional civil penalties.

IT IS FURTHER ORDERED AND AGREED that this Consent Order governs only United Utility Companies, Inc.'s liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and United Utility Companies, Inc., with respect to the resolution and settlement of the matters set forth herein. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth within this Consent Order.

[Signature Page Follows]

**FOR THE SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL CONTROL**



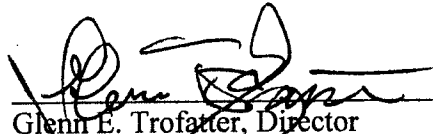
Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

Date: 4/27/10



David E. Wilson, Jr., P.E.,
Bureau Chief
Bureau of Water

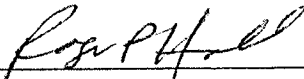
Date: 4-22-10



Glenn E. Trofater, Director
Water Pollution Control Division
Bureau of Water

Date: 4/20/2010

Reviewed By:

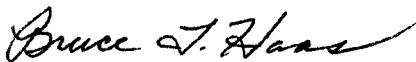


Attorney
Office of General Counsel

Date: 4/26/10

WE CONSENT:

UNITED UTILITY COMPANIES, INC.



Mr. Bruce Haas, Regional Director

Date: 4/20/2010